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BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of a Power Purchase Agreement with Mariposa Energy, LLC (U 39-E)	Application 09-04-001 (Filed April 1, 2009)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) REPLY COMMENTS IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING SEEKING PENALTY PROPOSALS AND INPUTS ON NEXT STEPS

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Pacific Gas and Electric Company ("PG&E") respectfully submits these reply comments in response to the *Administrative Law Judge's Ruling Seeking Penalty Proposals and Input on Next Steps* ("Ruling") issued February 11, 2016 in this proceeding.

Besides PG&E, the only party that filed opening comments was CAlifornians for Renewable Energy, Inc. ("CARE"). In general, CARE ignores many of the California Public Utilities Commission ("Commission") findings and conclusions already reached in this proceeding. CARE also raises issues that the Commission has determined are outside of the scope of the penalty phase of this proceeding. Because the issues raised by CARE have largely been decided or are outside of the scope of this proceeding, the Commission should reject CARE's proposals and adopt the penalty amount recommended in PG&E's opening comments. Below, PG&E addresses CARE's comments regarding the three issues identified in the Ruling.

I. THERE ARE NO RELEVANT FACTS STILL IN DISPUTE

CARE raises three issues regarding potential relevant facts in dispute. First, CARE asserts that there is a factual issue as to whether an application filed by PG&E in March 2012 related to the Oakley Generating Station ("Oakley") project was also a violation of the Mariposa

Settlement.[1] Second, CARE argues that there are factual issues related to certain email communications.[2] Third, CARE asserts there are factual issues as to whether the GWF and Los Esteros upgrade contracts were inferior to the Oakley project contract.[3] CARE's arguments are without merit and should be rejected.

A. CARE's Argument Regarding The Oakley Application

CARE argues that in addition to the three applications that the Commission previously identified as being at issue in this proceeding[4], there is a fourth application that violated the Mariposa Settlement. Specifically, CARE argues that A.12-03-026 (*i.e.*, the Oakley Application), which PG&E filed on March 30, 2012 regarding the Oakley project, violated Condition B of the Mariposa Settlement.[5] There are several problems with this argument.

First, CARE's arguments regarding the Oakley Application are moot. The Oakley Application was filed on March 30, 2012. On April 12, 2012, after the Oakley Application was filed, Communities for a Better Environment ("CBE") filed an application for rehearing in this proceeding that expressly discussed the Oakley Application and alleged that the Oakley Application was a breach of the Mariposa Settlement.[6] The Commission rejected CBE's arguments in January 2015, when it issued D.15-01-052. Specifically, the Commission determined that "[b]ecause there is now no approved Oakley PPA, and no current application for

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[1] CARE Comments at pp. 4-5. PG&E filed Application ("A.") 12-03-026 on March 30, 21012 regarding the Oakley project ("Oakley Application").

[2] CARE Comments at pp. 5-7.

[3] CARE Comments at pp. 7-8. The GWF and Los Esteros upgrade contracts are described briefly in PG&E's opening comments on pages 3-4 and in more detail in Decision ("D.") 10-07-042 on pages 8-10.

[4] D.12-03-008, Conclusion of Law ("COL") 3 (identifying three applications at issue).

[5] CARE Comments at pp. 4-5.

[6] *Communities for a Better Environment Application for Rehearing of Decision (D.) 12-03-008*, filed April 12, 2012 at pp. 7-9 (referring to Oakley Application and asking the Commission to reject the Oakley Application "as it is in breach of the Mariposa Settlement Agreement . . ..").

approval of the Oakley PPA, all rehearing arguments to the effect that procurement of energy from the Oakley project violates the Settlement, are moot."[7]

Second, CARE's arguments regarding the Oakley Application are collaterally estopped. The Commission addressed the Oakley Application in D.15-01-052 and determined that assertions concerning the Oakley Application and Oakley project are now moot. In its application for rehearing of that decision, CARE again raised the Oakley Application and asserted that it was a violation of the Mariposa Settlement.[8] The Commission summarily dismissed CARE's application for rehearing, including its arguments regarding the Oakley Application.[9] Under California Public Utilities Code section 1709, Commission orders and decisions that have become final are conclusive in collateral actions or proceedings. The Commission's decision to dismiss CARE's argument regarding the Oakley Application is now final and conclusive, and CARE should not be able to collaterally attack that decision now.

Finally, CARE ignores the fact that in D.10-07-045, the Commission expressly permitted PG&E to resubmit the Oakley project if certain conditions were met.[10] In the Oakley Application proceeding, one of the arguments made by PG&E as a basis for approving the Oakley project was that the conditions identified in D.10-07-045 had been satisfied and thus it was appropriate to resubmit the Oakley project.[11] Given the Commission's direction in D.10-07-045 that PG&E could resubmit the Oakley project if certain conditions were met, the filing of the Oakley Application cannot be considered a violation of the Mariposa Settlement. While the

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[7] D.15-01-052 at p. 3.

[8] *Application for Rehearing of CAlifornians for Renewable Energy, Inc. (CARE) of Decision 15-01-052*, filed February 26, 2015 at p. 5.

[9] D.15-05-056 (dismissing CARE's application for rehearing of D.15-01-052).

[10] D.10-07-045 at pp. 40-41.

[11] *See e.g. PG&E's Opening Post-Hearing Brief*, filed September 17, 2012 in A.12-03-026, at pp. 36-48 (arguing the Oakley project was authorized under D.10-07-045).

Commission's decision approving the Oakley Application was ultimately annulled by the Court of Appeal in *The Utility Reform Network v. CPUC*, 223 Cal.App.4th 945 (2014), CARE cannot argue that submission of the Oakley Application was a violation of the Mariposa Settlement because the Commission had expressly permitted resubmission of the Oakley project in D.10-07-045.

B. CARE's Arguments Regarding Email Communications

CARE also argues that there may be factual disputes regarding certain email communications.[12] CARE already raised this issue in its application for rehearing of D.15-01-052, and its application for rehearing was squarely rejected by the Commission. Specifically, the Commission explained:

> None of the three types of arguments CARE makes is the appropriate subject for a second round rehearing application. CARE's contention that it should be allowed to address new issues about emails and improper communications lacks merit. Those issues are not appropriate because they are not within the scope of the proceeding and not addressed in the *Rehearing Decision*. CARE cannot raise an issue at the rehearing stage, let alone in a second application for rehearing, that the Commission has never considered or rule upon earlier.[13]

Here, CARE is again trying to raise issues that the Commission stated are "not within the scope of the proceeding." CARE's arguments regarding email communications are untimely and collaterally estopped, similar to its arguments regarding the Oakley Application.

C. CARE's Arguments Regarding The Merits of the GWF and Los Esteros Upgrade Contracts

CARE's third argument concerns the merits of the GWF and Los Esteros upgrade contracts at issue in the GWF and Calpine Applications, compared to the contract for the Oakley

[12] CARE Comments at pp. 5-7.

[13] D.15-05-056 at p. 5.

project.[14] As with CARE's other arguments, this issue has already been raised with and decided by the Commission. Specifically, in D.12-03-008, the Commission explained that while PG&E's three applications violated Condition B in the Mariposa Settlement, this violation "did not hinder [the Commission's] ability to perform a thorough evaluation of each application on its own merits and together as a part of [the Commission's] overall evaluation of PG&E's actions to fulfill its 2006 LTPP need authorization. Nothing presented in this petition suggests that [the Commission's] evaluation of these projects was short of thorough or complete and that our approval was not in the ratepayer interest."[15] Issues related to the Commission's review of the GWF and Calpine Applications have already been raised, and addressed, and thus CARE's argument that there may be additional factual issues related to these applications should be rejected.

II. EVIDENTIARY HEARINGS ARE NOT NECESSARY

CARE argues that hearings will likely be required to address some of the factual issues that it raised in response to Issue #1.[16] Because CARE's arguments regarding additional factual information in dispute are without merit, evidentiary hearings will not be required.

III. PROPOSED PENALTIES/REMEDIES

In response to Issue #3, CARE raises many of the same issues that it raised for Issue #1. There are, however, a few additional issues raised by CARE that need to be addressed.

First, CARE asserts that PG&E should be required to reimburse customers $544,449.56 for intervenor compensation awarded in various proceedings.[17] However, the main proceeding

[14] CARE Comments at pp. 7-8.

[15] D.12-03-008 at pp. 13-14.

[16] CARE Comments at p. 8.

[17] CARE Comments at pp. 9, 11-13.

identified by CARE for these costs is the Oakley Application which, as described above in Section I.A, is not at issue in the penalty phase of this proceeding and thus should not be the basis for a penalty.[18] CARE also refers to intervenor costs that were incurred in the GWF and Calpine Applications.[19] However, as PG&E explained in its opening comments, these proceedings involved a number of contracts, not just contracts associated with the Tracy and Los Esteros upgrades.[20] It is not clear how much of these intervenor costs were associated with the Tracy and Los Esteros upgrade contracts, and how much was associated with other issues in those proceedings.

Second, CARE argues that customers should be compensated for the costs of the GWF and Los Esteros upgrade contracts because these contracts were allegedly less valuable than the Oakley project contract.[21] This argument is contrary to the Commission's determination that it carefully reviewed the GWF and Los Esteros upgrade contracts and there was no evidence that these contracts were not in the customers' interests.[22] Given the Commission's determination that the GWF and Los Esteros upgrade contracts were just and reasonable, and that PG&E's violation of the Mariposa Settlement did not adversely impact the Commission's review of these contracts, there is no basis for CARE's suggestion that a penalty be imposed on PG&E related to the approval of the GWF and Los Esteros upgrade contracts.

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[18] CARE Comments at pp. 12-12 and n. 15 (describing intervenor compensation associated with the Oakley Application).

[19] CARE Comments at p. 12 and n. 14 (referring to GWF Application costs, as well as Calpine Application costs).

[20] PG&E Comments at pp. 3-5.

[21] CARE Comments at pp. 9-10, 17.

[22] D.12-03-008 at pp. 13-14.

Third, CARE asserts that PG&E should be fined $50,000 for each of the email communications CARE identified in its comments.[23] However, as explained above in Section I.B, the Commission has determined that the e-mails and communications identified by CARE are not at issue in this proceeding.[24] Thus, a penalty related to these communications is not appropriate.

Finally, with regard to the violations of Condition B of the Mariposa Settlement, CARE proposes that PG&E be fined $50,000 per incident.[25] This is the maximum amount allowed under Public Utilities Code section 2107 and, as PG&E explained in its opening brief, is inconsistent with Commission precedent. PG&E recommends the Commission adopt the penalty identified in PG&E's opening comments because it is consistent with Commission precedent and the facts in this proceeding.

Respectfully submitted,

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[23] CARE Comments at pp. 10, 14.

[24] D.15-05-056 at p. 5.

[25] CARE Comments at pp. 8-9. CARE has recommended a fine of $150,000 based on its claim that the Oakley Application was a third violation of the Mariposa Settlement. This issue is addressed in Section I.A of these reply comments.